

INDIA'S LEGAL AND MORAL RIGHT IN KASHMIR

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While Pakistan has mounted a large scale propaganda campaign to project to the world its cause in Kashmir, we in India seem to have done little beyond affirming and re-affirming that Kashmir is an integral part of our country and that it will be defended at all costs. This gives an impression that our case in Kashmir is only that of possession and our ability to hold it by force. In actual fact, however, India alone has legal as well as moral right over Kashmir and Pakistan's case is only that of a thief shouting "thief thief".

India's legal right springs from the fact that Maharaja Hari Singh of Kashmir acceded his state to the Indian Union. Under the Independence Act of 1947, the Ruler of a State, and he alone, could decide which of the two Dominions to join or whether to remain independent of both. Legally the States' peoples' right to self-determination was not part of the process of accession of States. The question of the right of the people to decide which way to go did not figure even during the discussions between the Viceroy and the leaders of the Congress and the Muslim League, on the June 3(1947) which formed the basis for the Indian Independence Act of 1947.

This is not to deny the importance of the moral aspect of the people's right to self-determination. The point that needs to be made is that here again it has always been India that has championed this cause and not Pakistan. For Pakistan the support for the ideal of self-determination has been a matter of convenience rather than conviction. It turned a strong votary of self-determination only after it failed to secure the accession of Kashmir through force of arms. Before this, while the Maharaja was still weighing the pros and cons of his difficult options, Pakistan never raised the issue of ascertaining the wishes of the people. As a matter of fact Mr Jinnah openly proclaimed that the question of accession depended entirely on the choice of the Maharaja and that the people of the State had no right to question his choice. Being convinced of this legal aspect, Pakistani leaders had then found it necessary to woo the Maharaja by promising him that in Pakistan he would be allowed to continue as an absolute Ruler of his State, with no requirement for delegating any of his present powers to the people. Subsequently it was on the basis of this very legalistic stand that Pakistan accepted the accession of Junagarh. That Pakistan could not hold on to that State in the face of the people's rebellion, because of the geographical limitations is, of course, another matter. Nor did Pakistan show any enthusiasm towards the principle of self-determination being applied in the case of Hyderabad, where the majority was, without doubt, for joining the Indian Dominion.

Maharaja's Role

For India, on the other hand, self determination has been a matter of creed. When the Prime Minister of Kashmir, Pandit Ram Chander Kak, approached Sardar VB Patel, (well before 15 August 1947), to discuss the possibility of the State's accession to the Indian Union, the former was categorically told by the latter that no talks could take place without the association of the representative of the people of Kashmir. So strongly were the Indian leaders committed to the principle of self-determination that they had it conveyed to the Maharaja, through Mountbatten, that an accession of the State to Pakistan on the basis of the wishes of his people would not be taken amiss by India.

Today, with the publication of Sardar Patel Correspondence it can be shown that the Maharaja was not, after all, undecided on the issue of accession and that he had begun to show his inclinations towards an accession to the Indian Union much before 15 August 1947. The

reason why the accession could not be brought about early was that while the Indian Government insisted that the accession was to be only with the “cooperation of Sheikh Abdullah”, who as the leader of the National Conference, the largest political party in Kashmir, could justifiably be considered to represent the voice of the majority of the people of Kashmir, the Sheikh sought time to satisfy himself about the wishes of the people, after he was released from jail by the Maharaja on the insistence of the Indian leaders. The accession was also delayed when Sheikh Abdullah, as a price for his “cooperation” set about to extract terms for accession to the Indian Union, which Pakistani leaders had refused to concede as a price for favouring accession to Pakistan. Such terms that no other Princely State had been able to obtain, thus far, from the Indian Union or Pakistan. It may not have been practical politics, but Article 370 of the Indian Constitution, which grants special status to Kashmir within the Indian Union, has, in fact, resulted from the eagerness on the part of the Indian leaders to meet the wishes of the people at all costs.

Indian Leaders’ Obsession

The Indian leaders’ obsession with the principle of self-determination was so great that even after Kashmir fell into their lap as a result of the Pakistani invasion of the State they went to the ridiculous extent of making the acceptance of the accession provisional and subject to the condition that “as soon as law and order have been restored in Kashmir and her soil cleared of the invaders, the question of accession should be settled by a reference to the people”. The Indian Government then stuck to its promise of ascertaining the wishes of the people even though the Kashmiris’ support for the accession to the Indian Union was glaringly visible. Firstly Sheikh Abdullah had personally endorsed the decision of the Maharaja to accede to the Indian Union. Secondly, even though there were no troops of the State Force available for internal security duties in Srinagar during the crucial days while the request of the Maharaja was being considered at Delhi, the City remained calm and peaceful – not a single soul stirring against the proposed accession of the State to India. Thirdly, when the first batch of Indian troops landed at Srinagar, they were accorded a big welcome by the people and it was only local assistance that enabled the troops to move from the airfield to the battle front. And, fourthly, during the Indo-Pak military conflict that followed the Kashmiris, without exception, supported the Indian Army wholeheartedly in its efforts to drive the Pakistani raiders away from Srinagar.

The rationale behind India complaining to the Security Council about the Pakistani invasion of Kashmir when the invaders were on the run and could have, in any case, been cleared out of the State within a matter of weeks, is beyond comprehension. But even more difficult to understand are the compulsions that led the Government of India to commit itself to a plebiscite in Kashmir as part of its complaint to the world body regarding the aggression committed by Pakistan. Nevertheless this goes to show the extent to which India could go in the pursuance of its ideal of self-determination. In the bargain India had to accept the cease-fire, which enabled Pakistan to retain large portions of the State as the fruit of its aggression.

Pakistan Thwarted Plebiscite

It is ironical that, in spite of the high idealism displayed by India with regard to the people’s right to self-determination, Pakistan has been able to create an impression that it is India that has been shying away from holding of a plebiscite in Kashmir on the basis of the UN resolution. In actual fact it was Pakistan that thwarted the holding of a plebiscite in Kashmir. At the time of the UN resolution Pakistan was aware that with the memories of atrocities committed by the Pakistani invaders still fresh in the minds of the people of Kashmir, it had no chance of winning a plebiscite. Therefore, even while outwardly demanding a plebiscite, Pakistan put

every conceivable obstruction in the way of demilitarisation of the State which was a re-requisite to the holding of the plebiscite. Pakistan sought to equate its own illegal occupation of a portion of the State with the legitimate presence of the Indian Army in Kashmir at the request of the Maharaja after he had acceded to the Indian Union.

It was only when no agreement could be reached on the modalities of demilitarisation that India decided to call it a day as far as the holding of the plebiscite was concerned. Instead India sought to ascertain the wishes of the people through the State Constituent Assembly duly elected on the basis of adult franchise. The uncertainty through which the people of the State had been living all these years was finally ended in 1957 when the State Constituent Assembly adopted a Constitution, Article 3 of which stated categorically that "The State of Jammu and Kashmir is and shall be an integral part of the Union of India". It should not be surprising that the Pakistanis did not appreciate the significance of this historical decision by an elected body as they had never seen free elections in their own country till then - and nor were they perhaps to see them for many more years to come.

That the verdict of the people through their Constituent Assembly was not rigged is proved by the fact that for the next two decades and over, there never appeared more than a microscopic section of the people that ever disputed the State's accession to India, or demanded a further right of self-determination. On the other hand the Kashmiris gave a big rebuff to Pakistan during the Indo-Pak war of 1965. They not only refused to give shelter to Pakistani infiltrators but also actively assisted the Indian Army in apprehending them. This lack of people's support to Pakistani infiltrators is authoritatively cited in world military circles as one of the major causes of Pakistan's military failure in Kashmir. Then in 1971 again the Kashmiri people stood solidly behind the Indian Army as it evicted the Pak Army from piquet after piquet to liberate considerable territory of Kashmir from under Pakistan's illegal occupation. What further proof is then required of the fact that the people have already exercised their right of self-determination by opting for the Indian Union.

It is not quite clear as to what the present turmoil in the Kashmir Valley is all about. There is a section of the people that is striving to take Kashmir to Pakistan and another, even larger one that is seeking independence from both India and Pakistan. One thing common to both, however, is that both are demanding right to self-determination. How many supporters there are for each cause is not known. Suffice it to remember that terrorism can make a political movement look much larger than it really is. But whatever their number such people have no right to demand secession. How can the right of self-determination exercised by one generation of people be allowed to be challenged by the next after just 40 years. If that were to be allowed there would be no end to this exercise and every country in the world would become vulnerable to dismemberment.